

**In re: CARL DEAN CLARK, JR., AND MARIE JOYCE COLEMAN.
HPA Docket No. 98-0013.
Decision and Order as to Marie Joyce Coleman filed August 9, 2000.**

Horse protection – Allowing entry – Knowledge – Ability to pay – Civil penalty – Disqualification.

The Judicial Officer affirmed the Decision by Judge Baker (ALJ), except with respect to the assessment of a \$2,000 civil penalty. The Judicial Officer concluded that the Respondent waived her right to an oral hearing and admitted the material allegations of fact in the Complaint based on her failure to appear at the scheduled hearing after having been duly notified of the hearing (7 C.F.R. § 1.141(e)(1)). The Judicial Officer concluded that the Respondent allowed the showing or exhibiting in a horse show of a horse which was sore, in violation of 15 U.S.C. § 1824(2)(D). The Judicial Officer rejected Respondent's argument that she could not have violated 15 U.S.C. § 1824(2)(D) because she did not sore the horse in question and did not know that the horse in question had been sore. The Judicial Officer found that the Respondent proved her inability to pay the \$2,000 civil penalty assessed by the ALJ and reduced the civil penalty to \$1. In addition to the civil penalty, the Judicial Officer disqualified the Respondent for 1 year from showing, exhibiting, or entering any horse or participating in any horse show, horse exhibition, horse sale, or horse auction.

Colleen A. Carroll, for Complainant.
Respondent, Pro se.

Initial decision issued by Dorothea A. Baker, Administrative Law Judge.
Decision and Order issued by William G. Jenson, Judicial Officer.

The Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter Complainant], instituted this disciplinary administrative proceeding under the Horse Protection Act of 1970, as amended (15 U.S.C. §§ 1821-1831) [hereinafter the Horse Protection Act], and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-1.151) [hereinafter the Rules of Practice] by filing a Complaint on August 17, 1998.

The Complaint alleges that Carl Dean Clark, Jr., and Marie Joyce Coleman violated the Horse Protection Act. Pursuant to section 1.138 of the Rules of Practice (7 C.F.R. § 1.138), Complainant and Carl Dean Clark, Jr., agreed to the entry of a Consent Decision. Administrative Law Judge Dorothea A. Baker [hereinafter the ALJ] entered the Consent Decision on December 1, 1999. *In re Carl Dean Clark, Jr.* (Consent Decision as to Carl Dean Clark, Jr.), 58 Agric. Dec. ____ (Dec. 1, 1999).

The Complaint alleges Marie Joyce Coleman [hereinafter Respondent]: (1) on or about May 1, 1997, entered, for the purpose of showing or exhibiting, a horse known as "Lincoln Lady," as entry number 144 in class number 28, at the Spotted Saddle Horse Breeders and Exhibitors Association Horse Show in Shelbyville, Tennessee, while the horse was sore, in violation of section 5(2)(B) of the Horse Protection Act (15 U.S.C. § 1824(2)(B)) (Compl. ¶ II(C)); and (2) on May 1, 1997, allowed the showing or exhibiting of Lincoln Lady, as entry number 144 in class

number 28, at the Spotted Saddle Horse Breeders and Exhibitors Association Horse Show in Shelbyville, Tennessee, while the horse was sore, in violation of section 5(2)(D) of the Horse Protection Act (15 U.S.C. § 1824(2)(D)) (Compl. ¶ II(D)). On November 18, 1998, Complainant filed Notice of Amendment of Complaint which alleges that on May 1, 1997, Respondent allowed Lincoln Lady to be shown or exhibited as entry number 144 in class number 28, at the Spotted Saddle Horse Breeders and Exhibitors Association Horse Show in Shelbyville, Tennessee, while the horse was wearing pad bands in a manner prohibited by section 11.2(b)(15) of the Horse Protection Regulations (9 C.F.R. § 11.2(b)(15)) (Notice of Amendment of Compl. ¶ II(F)).

On October 6, 1998, Respondent filed an Answer denying the material allegations of the Complaint, and on December 10, 1998, Respondent filed an Answer denying the material allegations of the Notice of Amendment of Complaint.

On August 6, 1999, the ALJ scheduled a hearing to begin on October 20, 1999, at 9:00 a.m, local time, in Shelbyville, Tennessee (Change in Oral Hearing Date). On October 20, 1999, the ALJ conducted a hearing in Shelbyville, Tennessee. Colleen A. Carroll, Office of the General Counsel, United States Department of Agriculture, represented Complainant. Eric L. Davis, Franklin, Tennessee, represented Carl Dean Clark, Jr. Respondent failed to appear at the October 20, 1999, hearing.

Section 1.141(e)(1) of the Rules of Practice provides that a respondent's failure to appear at the hearing constitutes a waiver of hearing and an admission of all the material allegations of fact contained in the complaint, as follows:

§ 1.141 Procedure for hearing.

....

(e) *Failure to appear.* (1) A respondent who, after being duly notified, fails to appear at the hearing without good cause, shall be deemed to have waived the right to an oral hearing in the proceeding and to have admitted any facts which may be presented at the hearing. Such failure by the respondent shall also constitute an admission of all the material allegations of fact contained in the complaint. Complainant shall have an election whether to follow the procedure set forth in § 1.139 or whether to present evidence, in whole or in part, in the form of affidavits or by oral testimony before the Judge. Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the Judge's decision and to appeal and request oral argument before the Judicial Officer with respect thereto in the manner provided in § 1.145.

7 C.F.R. § 1.141(e)(1).

Complainant elected to follow the procedure in section 1.139 of the Rules of

Practice (7 C.F.R. § 1.139), and on May 2, 2000, Complainant filed a Motion for Adoption of Proposed Decision and Order and a Proposed Decision and Order as to Marie Joyce Coleman Upon Admission of Facts by Reason of Default. On May 19, 2000, Respondent filed objections to Complainant's Motion for Adoption of Proposed Decision and Order and Complainant's Proposed Decision and Order as to Marie Joyce Coleman Upon Admission of Facts by Reason of Default.

On May 19, 2000, pursuant to sections 1.139 and 1.141(e) of the Rules of Practice (7 C.F.R. §§ 1.139, .141(e)), the ALJ issued a Decision and Order as to Marie Joyce Coleman [hereinafter Initial Decision and Order]: (1) concluding that on or about May 1, 1998, Respondent allowed the showing or exhibiting of Lincoln Lady, as entry number 144 in class number 28, at the Spotted Saddle Horse Breeders and Exhibitors Association Horse Show in Shelbyville, Tennessee, while the horse was sore, in violation of section 5(2)(D) of the Horse Protection Act (15 U.S.C. § 1824(2)(D)); (2) assessing Respondent a \$2,000 civil penalty; and (3) disqualifying Respondent for 1 year from showing, exhibiting, or entering any horse, directly or indirectly through any agent, employee, or other device, and from judging, managing, or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction (Initial Decision and Order at 3-4).

On June 5, 2000, Respondent appealed to the Judicial Officer and filed a petition to reopen the hearing. Complainant failed to file a timely response to Respondent's appeal petition and failed to file a timely response to Respondent's petition to reopen the hearing. On August 8, 2000, the Hearing Clerk transmitted the record of this proceeding to the Judicial Officer for a decision and a ruling on Respondent's petition to reopen the hearing.¹

Based upon a careful consideration of the record and pursuant to section 1.145(i) of the Rules of Practice (7 C.F.R. § 1.145(i)), except with respect to the civil penalty assessed against Respondent by the ALJ, I adopt the ALJ's Initial Decision and Order as the final Decision and Order. Additional conclusions by the Judicial Officer follow the ALJ's Conclusion of Law.

Applicable Statutory Provisions

15 U.S.C.:

TITLE 15—COMMERCE AND TRADE

. . . .

¹I am filing a Ruling Denying Petition to Reopen Hearing as to Marie Joyce Coleman simultaneous with the filing of this Decision and Order as to Marie Joyce Coleman. *In re Carl Dean Clark, Jr.* (Ruling Denying Petition to Reopen Hearing as to Marie Joyce Coleman), 59 Agric. Dec. ____ (Aug. 9, 2000).

CHAPTER 44—PROTECTION OF HORSES

§ 1821. Definitions

As used in this chapter unless the context otherwise requires:

. . . .

(3) The term “sore” when used to describe a horse means that—

(A) an irritating or blistering agent has been applied, internally or externally, by a person to any limb of a horse,

(B) any burn, cut, or laceration has been inflicted by a person on any limb of a horse,

(C) any tack, nail, screw, or chemical agent has been injected by a person into or used by a person on any limb of a horse, or

(D) any other substance or device has been used by a person on any limb of a horse or a person has engaged in a practice involving a horse,

and, as a result of such application, infliction, injection, use, or practice, such horse suffers, or can reasonably be expected to suffer, physical pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving, except that such term does not include such an application, infliction, injection, use, or practice in connection with the therapeutic treatment of a horse by or under the supervision of a person licensed to practice veterinary medicine in the State in which such treatment was given.

§ 1824. Unlawful acts

The following conduct is prohibited:

. . . .

(2) The (A) showing or exhibiting, in any horse show or horse exhibition, of any horse which is sore, (B) entering for the purpose of showing or exhibiting in any horse show or horse exhibition, any horse which is sore, (C) selling, auctioning, or offering for sale, in any horse sale or auction, any horse which is sore, and (D) allowing any activity described in clause (A), (B), or (C) respecting a horse which is sore by the owner of such horse.

§ 1825. Violations and penalties

. . . .

(b) Civil penalties; review and enforcement

(1) Any person who violates section 1824 of this title shall be liable to the United States for a civil penalty of not more than \$2,000 for each violation. No penalty shall be assessed unless such person is given notice and opportunity for a hearing before the Secretary with respect to such violation. The amount of such civil penalty shall be assessed by the Secretary by written order. In determining the amount of such penalty, the Secretary shall take into account all factors relevant to such determination, including the nature, circumstances, extent, and gravity of the prohibited conduct and, with respect to the person found to have engaged in such conduct, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

(c) Disqualification of offenders; orders; civil penalties applicable; enforcement procedures

In addition to any fine, imprisonment, or civil penalty authorized under this section, any person who was convicted under subsection (a) of this section or who paid a civil penalty assessed under subsection (b) of this section or is subject to a final order under such subsection assessing a civil penalty for any violation of any provision of this chapter or any regulation issued under this chapter may be disqualified by order of the Secretary, after notice and an opportunity for a hearing before the Secretary, from showing or exhibiting any horse, judging or managing any horse show, horse exhibition, or horse sale or auction for a period of not less than one year for the first violation and not less than five years for any subsequent violation.

15 U.S.C. §§ 1821(3), 1824(2), 1825(b)(1), (c).

**ADMINISTRATIVE LAW JUDGE'S
INITIAL DECISION AND ORDER
(AS RESTATED)**

Respondent failed to appear at the hearing on October 20, 1999, and the material facts alleged in the Complaint, as amended, which are admitted by Respondent's failure to appear, are adopted and set forth in this Decision and Order

as Findings of Fact. Complainant elected to follow the procedure set forth in section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). This Decision and Order is issued pursuant to sections 1.139 and 1.141(e) of the Rules of Practice (7 C.F.R. §§ 1.139, .141(e)).

The transcript reveals Respondent's failure to appear at the hearing, as follows:

THE COURT: . . . Who appears for Respondent Coleman? Let the record reflect that there is no response. And I shall inquire, is Respondent Coleman in the room or is any representative of Respondent Coleman in the room? The record will reflect that there is no response.

According to the information available in the file of this case, there is indicated that there was served upon the parties notification of this oral hearing date, namely October 20th, 1999 in Shelbyville, Tennessee.

Ms. Carroll, with respect to Respondent Coleman, do you have any comments you wish to make?

MS. CARROLL: Your Honor, at this time the Government would move for the issuance of a default judgment against Ms. Coleman for failure to appear at the hearing.

THE COURT: Do you -- you have an alternative of offering evidence if you wish to. Do you intend to pursue that avenue or simply to rely upon failure to appear?

MS. CARROLL: We would do both. We intend to present -- because Ms. Coleman is alleged to have been the owner of the horse and to have allowed the exhibition of the horse while sore in violation of the Act we would -- in one sense, at least, Ms. Coleman's liability depends on the case presented by the Government against Respondent Clark. So, we are prepared to proceed against Ms. Coleman in absentia as well.

Tr. 3-4.

At the oral hearing, Complainant and Carl Dean Clark, Jr., agreed to the entry of a Consent Decision. That agreement was finalized by the issuance of a Consent Decision dated December 1, 1999. Among the Findings of Fact set forth in the Consent Decision are the following:

3. On or about May 1, 1998, respondent Carl Dean Clark, Jr., entered for the purpose of showing or exhibiting, and showed or exhibited, "Lincoln Lady" as Entry No. 144 in Class No. 28, at the Spotted Saddle Horse Show

in Shelbyville, Tennessee, while the horse was sore. . . .

4. On May 1, 1998, . . . respondent Carl Dean Clark, Jr., showed or exhibited “Lincoln Lady,” as Entry No. 144 in Class No. 28, at the Spotted Saddle Horse Show in Shelbyville, Tennessee, while the horse was wearing hoof bands in a manner prohibited by section 11.2(15) [sic] of the horse protection regulations (9 C.F.R. § 11.2(15) [sic]).

In re Carl Dean Clark, Jr. (Consent Decision as to Carl Dean Clark, Jr.), 58 Agric. Dec. ___, slip op. at 2 (Dec. 1, 1999).

On May 2, 2000, Complainant filed a Motion for Adoption of Proposed Decision and Order and a Proposed Decision and Order as to Marie Joyce Coleman Upon Admission of Facts by Reason of Default. On May 19, 2000, Respondent filed objections to Complainant’s Motion for Adoption of Proposed Decision and Order and Complainant’s Proposed Decision and Order as to Marie Joyce Coleman Upon Admission of Facts by Reason of Default. Respondent states “I can’t help that I’ve gotten old and confused, and missed that hearing. You say I allowed Lincoln Lady to be shown. You can bet your bottom dollar I did. . . . I didn’t know she had been sore. . . . That is why I did without so much, never dreaming he had sore her.”

Respondent’s failure to appear at the hearing as well as the admissions made in her objections to Complainant’s Motion for Adoption of Proposed Decision and Order and Complainant’s Proposed Decision and Order as to Marie Joyce Coleman Upon Admission of Facts by Reason of Default are sufficient bases for the issuance of the following Findings of Fact and Conclusion of Law.

Findings of Fact

Respondent Marie Joyce Coleman is an individual whose mailing address is 2201 Claude Fox Road, Cornersville, Tennessee 37047, and at all times material to this proceeding, was the owner of the horse known as “Lincoln Lady.” On or about May 1, 1998, Respondent allowed the entry and showing or exhibiting of Lincoln Lady, as entry number 144 in class number 28, at the Spotted Saddle Horse Breeders and Exhibitors Association Horse Show, in Shelbyville, Tennessee.

Conclusion of Law

On May 1, 1998, Respondent Marie Joyce Coleman allowed the showing or exhibiting of Lincoln Lady as entry number 144 in class number 28, at the Spotted Saddle Horse Breeders and Exhibitors Association Horse Show in Shelbyville, Tennessee, while the horse was sore, in violation of section 5(2)(D) of the Horse Protection Act (15 U.S.C. § 1824(2)(D)).

ADDITIONAL CONCLUSIONS BY THE JUDICIAL OFFICER

Respondent raises three issues in her appeal petition. First, Respondent contends the ALJ's conclusion that Respondent allowed the showing or exhibiting of Lincoln Lady, while the horse was sore, in violation of section 5(2)(D) of the Horse Protection Act (15 U.S.C. § 1824(2)(D)), is error.

Respondent is deemed by her failure to appear at the hearing without good cause to have admitted the material allegations of fact contained in the Complaint. Therefore, I find that the ALJ properly concluded Respondent allowed the showing or exhibiting of Lincoln Lady, while the horse was sore, in violation of section 5(2)(D) of the Horse Protection Act (15 U.S.C. § 1824(2)(D)), as alleged in the Complaint.

Moreover, Respondent's arguments in support of her contention that the ALJ's conclusion is error lack merit. Respondent contends Carl Dean Clark, Jr., admitted he sored Lincoln Lady and argues that, based on this admission, she could not, as a matter of law, have violated 15 U.S.C. § 1824(2)(D).

I disagree with Respondent. As an initial matter, Carl Dean Clark, Jr., did not admit that he sored Lincoln Lady. Instead, Mr. Clark admitted that, while Lincoln Lady was sore: (1) he transported Lincoln Lady to the Spotted Saddle Horse Breeders and Exhibitors Association Horse Show in Shelbyville, Tennessee, for the purpose of showing or exhibiting Lincoln Lady; (2) he entered Lincoln Lady in the Spotted Saddle Horse Breeders and Exhibitors Association Horse Show in Shelbyville, Tennessee, for the purpose of showing or exhibiting Lincoln Lady; and (3) he showed or exhibited Lincoln Lady in the Spotted Saddle Horse Breeders and Exhibitors Association Horse Show in Shelbyville, Tennessee, while Lincoln Lady was wearing hoofbands in a manner prohibited by section 11.2(b)(15) of the Horse Protection Regulations (9 C.F.R. § 11.2(b)(15)). *In re Carl Dean Clark, Jr.* (Consent Decision as to Carl Dean Clark, Jr.), 58 Agric. Dec. ____ (Dec. 1, 1999).

Moreover, even if Carl Dean Clark, Jr., admitted that he sored Lincoln Lady, that admission would not result in my finding that the ALJ erred by concluding that Respondent violated section 5(2)(D) of the Horse Protection Act (15 U.S.C. § 1824(2)(D)). An owner may violate section 5(2)(D) of the Horse Protection Act (15 U.S.C. § 1824(2)(D)) even if a person other than the owner sored a horse, which was shown or exhibited in a horse show or horse exhibition while sore. Therefore, even if I found that Carl Dean Clark, Jr., sored Lincoln Lady, that finding alone would not cause me to conclude that the ALJ erred by concluding that Respondent violated 15 U.S.C. § 1824(2)(D).

Respondent also contends the ALJ's conclusion that Respondent violated 15 U.S.C. § 1824(2)(D) is error because Respondent did not know that Lincoln Lady had been sored.

An owner who does not know that a horse that she owns is sore, which horse is entered, shown, or exhibited at a horse show while sore, may be found to have

violated 15 U.S.C. § 1824(2)(D), notwithstanding her ignorance.² Therefore, even if I found that Respondent did not know that Lincoln Lady was sore, that finding alone would not cause me to conclude that the ALJ erred by concluding that Respondent violated 15 U.S.C. § 1824(2)(D).

Second, Respondent contends that she is not able to pay the \$2,000 civil penalty assessed by the ALJ.

The sanction of a \$2,000 civil penalty and a 1-year disqualification is the routine penalty for a first violation of the Horse Protection Act.³ Section 6(b)(1) of the Horse Protection Act (15 U.S.C. § 1825(b)(1)) provides that in determining the amount of the civil penalty the Secretary of Agriculture must take into account the respondent's ability to pay the civil penalty. Respondent bears the burden of coming forward with some evidence indicating an inability to pay the civil penalty.⁴

²See *Lewis v. Secretary of Agriculture*, 73 F.3d 312, 316 (11th Cir. 1996) (stating an owner may violate 15 U.S.C. § 1824(2)(D) even if the owner does not know the horse was sore); *Baird v. United States Dep't of Agric.*, 39 F.3d 131, 137 (6th Cir. 1994) (stating an owner who does not know that a horse he owns is sore, which horse is entered, shown, or exhibited at a horse show, may be found to have violated 15 U.S.C. § 1824(2)(D) notwithstanding his ignorance); *Stamper v. Secretary of Agriculture*, 722 F.2d 1483, 1489 (9th Cir. 1984) (stating the owners of a horse could be held liable for a violation of 15 U.S.C. § 1824(2)(D) even though they had no knowledge that the horse was sore where they did not expressly order the trainer not to show the horse if he was sore); *Thornton v. United States Dep't of Agric.*, 715 F.2d 1508, 1511 (11th Cir. 1983) (rejecting the respondent's contention that the term "allowing" in 15 U.S.C. § 1824(2)(D) requires a showing that the owner knew the horse was sore at the time it was shown).

³*In re David Tracy Bradshaw*, 59 Agric. Dec. ___, slip op. at 14 (June 14, 2000); *In re Jack Stepp*, 57 Agric. Dec. 297, 312 (1998), *aff'd* 188 F.3d 508 (Table), 1999 WL 646138 (6th Cir. 1999) (not to be cited as precedent under 6th Circuit Rule 206); *In re John T. Gray* (Decision as to Glen Edward Cole), 55 Agric. Dec. 853, 890 (1996); *In re Mike Thomas*, 55 Agric. Dec. 800, 846 (1996); *In re Tracy Renee Hampton* (Decision as to Dennis Harold Jones), 53 Agric. Dec. 1357, 1390-91 (1994); *In re Cecil Jordan* (Decision as to Sheryl Crawford), 52 Agric. Dec. 1214, 1240-41 (1993), *aff'd sub nom. Crawford v. United States Dep't of Agric.*, 50 F.3d 46 (D.C. Cir.), *cert. denied*, 516 U.S. 824 (1995); *In re Linda Wagner* (Decision as to Roy E. Wagner and Judith E. Rizio), 52 Agric. Dec. 298, 317-18 (1993), *aff'd*, 28 F.3d 279 (3^d Cir. 1994); *In re John Allan Callaway*, 52 Agric. Dec. 272, 283 (1993); *In re A.P. Holt* (Decision as to Richard Polch and Merrie Polch), 52 Agric. Dec. 233, 248-50 (1993), *aff'd per curiam*, 32 F.3d 569, 1994 WL 390510 (6th Cir. 1994) (citation limited under 6th Circuit Rule 24).

⁴*In re Jack Stepp*, 57 Agric. Dec. 297, 318 (1998), *aff'd*, 188 F.3d 508 (Table), 1999 WL 646138 (6th Cir. 1999) (not to be cited as precedent under 6th Circuit Rule 206); *In re C.M. Oppenheimer* (Decision as to C.M. Oppenheimer), 54 Agric. Dec. 221, 321 (1995); *In re Kathy Armstrong*, 53 Agric. Dec. 1301, 1324 (1994), *aff'd per curiam*, 113 F.3d 1249 (11th Cir. 1997) (unpublished); *In re Danny Burks*, 53 Agric. Dec. 322, 346 (1994); *In re Eddie C. Tuck* (Decision as to Eddie C. Tuck), 53 Agric.

Respondent's filings provide evidence of Respondent's inability to pay the \$2,000 civil penalty assessed by the ALJ. Moreover, on July 7, 2000, Complainant filed a Motion to Amend Decision and Order as to Marie Joyce Coleman requesting that no civil penalty be assessed against Respondent, as follows:

Complainant, the Administrator of the Animal and Plant Health Inspection Service hereby moves to amend the Decision and Order issued on May 19, 2000, in the above-captioned case. This motion is based on section 1.143(a) of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.143(a)), on all of the pleadings and papers on file herein, and specifically on respondent Marie Joyce Coleman's apparent inability to pay the \$2,000 civil penalty assessed in the Order. For this reason, the complainant respectfully requests that paragraph 1 of the Order issued May 19, 2000 (assessing a civil penalty of \$2,000), be deleted. The complainant requests that all other provisions of the Decision and Order be adopted.

Respondent did not respond to Complainant's Motion to Amend Decision and Order as to Marie Joyce Coleman.

Based on Respondent's evidence that she is unable to pay the \$2,000 civil penalty assessed by the ALJ, I assess Respondent a \$1 civil penalty. I reject Complainant's request that I assess Respondent no civil penalty. Section 6(c) of the Horse Protection Act (15 U.S.C. § 1825(c)) provides that a person may be disqualified from showing or exhibiting any horse and judging, managing, or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction if that person was convicted under section 6(a) of the Horse Protection Act (15 U.S.C. § 1825(a)) or has paid a civil penalty assessed under section 6(b) of the Horse Protection Act (15 U.S.C. § 1825(b)). I find that the disqualification of Respondent in accordance with 15 U.S.C. § 1825(c) is necessary to deter Respondent and other potential violators from future violations of the Horse Protection Act. Therefore, in order to disqualify Respondent as provided in 15 U.S.C. § 1825(c), I assess Respondent a \$1 civil penalty.

Third, Respondent contends that the ALJ prohibited Respondent from selling her horses and she must be allowed to sell her horses because she cannot feed them. The ALJ did disqualify Respondent from participating in any horse sale or horse

Dec. 261, 317 (1994), *appeal voluntarily dismissed*, No. 94-1887 (4th Cir. Oct. 6, 1994); *In re William Earl Bobo*, 53 Agric. Dec. 176, 194 (1994), *aff'd*, 52 F.3d 1406 (6th Cir. 1995); *In re A.P. Holt* (Decision as to Richard Polch and Merrie Polch), 52 Agric. Dec. 233, 249 (1993), *aff'd per curiam*, 32 F.3d 569, 1994 WL 390510 (6th Cir. 1994) (citation limited under 6th Circuit Rule 24); *In re A.P. "Sonny" Holt*, 49 Agric. Dec. 853, 865-72 (1990); *In re Richard L. Thornton*, 41 Agric. Dec. 870, 898 (1982), *aff'd*, 715 F.2d 1508 (11th Cir. 1983).

auction for 1 year. However, section 1.142(c)(4) of the Rules of Practice (7 C.F.R. § 1.142(c)(4)) provides that an administrative law judge's decision does not become effective if a party appeals to the Judicial Officer, as follows:

§ 1.142 Post-hearing procedure.

. . . .

(c) *Judge's decision.* . . .

(4) The Judge's decision shall become effective without further proceedings 35 days after the issuance of the decision, if announced orally at the hearing, or if the decision is in writing, 35 days after the date of service thereof upon the respondent, unless there is an appeal to the Judicial Officer by a party to the proceeding pursuant to § 1.145[.]

7 C.F.R. § 1.142(c)(4).

Respondent filed a timely appeal to the Judicial Officer. Therefore, the ALJ's Initial Decision and Order did not become effective and the Initial Decision and Order did not prohibit Respondent from participating in horse sales or horse auctions. Moreover, the disqualification provision in this Decision and Order is not effective until the 60th day after service of this Decision and Order on Respondent. Respondent's participation in a horse sale or horse auction prior to the effective date of this Decision and Order will not violate the Order in this Decision and Order.

For the foregoing reasons, the following Order should be issued.

Order

1. Respondent, Marie Joyce Coleman, is assessed a \$1 civil penalty. The civil penalty shall be paid by certified check or money order, made payable to the "Treasurer of the United States," and sent to:

Colleen A. Carroll
United States Department of Agriculture
Office of the General Counsel
Marketing Division
1400 Independence Avenue, SW
Room 2343-South Building
Washington, DC 20250-1417

Respondent's payment of the civil penalty shall be forwarded to, and received by, Ms. Carroll within 60 days after service of this Order on Respondent. Respondent shall indicate on the certified check or money order that payment is in

reference to HPA Docket No. 98-0013.

2. Respondent, Marie Joyce Coleman, is disqualified for 1 year from showing, exhibiting, or entering any horse, directly or indirectly through any agent, employee, or other device, and from judging, managing, or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction. "Participating" means engaging in any activity beyond that of a spectator, and includes, without limitation: (a) transporting or arranging for the transportation of a horse to or from any horse show, horse exhibition, horse sale, or horse auction; (b) personally giving instructions to exhibitors; (c) being present in the warm-up area, inspection area, or any area where spectators are not allowed at any horse show, horse exhibition, horse sale, or horse auction; and (d) financing the participation of any other person in any horse show, horse exhibition, horse sale, or horse auction.

The disqualification of Respondent shall become effective on the 60th day after service of this Order on Respondent.
